ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2022-RTD-02

April 7, 2022

TOWN OF CROSSFIELD

Case File Number 014737

[1] The Town of Crossfield (the "Public Body") requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* ("FOIP" or the "Act") to disregard access requests made by an individual, whom I will refer to as the Applicant.

[2] For the reasons outlined in this decision, I have decided to grant the Public Body authorization to disregard the Applicant's access requests. The Public Body is authorized to disregard future access requests only for information that it has already provided the Applicant in response to a previous access request.

Commissioner's Authority

[3] Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1) states:

> 55(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if
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> (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or
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> (b) one or more of the requests are frivolous or vexatious.

Background

[4] The Public Body requested authorization to disregard five access requests made by the Applicant. The Public Body states that since November 2019, it has received 20 access requests under FOIP from the Applicant. It responded to 15 of them, and at least one matter between the Public Body and the Applicant was before my office as a separate file. The Public Body states it has also received seven Peace Officer complaints from the Applicant. Based upon my review of the parties' submissions, the Applicant asked Alberta Justice and Solicitor General to review the Public Body's findings on at least two of these

Peace Officer complaints, one of which was held to be founded and another was unfounded and returned to the Public Body to impose discipline on the Peace Officer.

[5] It is apparent from my review of the parties' submissions, that there is a poor relationship between the Public Body and the Applicant. The Applicant's position is that he and his family have been mistreated and subjected to harassment and racism by the Public Body, particularly with respect to the Applicant's family's interactions with a Peace Officer and certain employees of the Public Body. The Public Body states that it has received numerous abusive communications, including emails from the Applicant and provided examples of these communications.

[6] The Applicant's access requests at issue in this matter include three requests for Alberta Municipal Enforcement Reports by a Peace Officer relating to three separate incidents, and a request for records relating to a Community Wrap Around Support relating to the Applicant's child, including any notification provided to the child's parents. Following the Public Body's application to disregard the Applicant's access requests, the Applicant submitted a further access request for every email ever sent to or from the Public Body relating to the Applicant or his child, which the Public Body also asked to disregard.

Analysis

Section 55(1)(a) – requests are repetitious or systematic in nature

[7] "Repetitious" is when a request for the same records or information is made more than once. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.

[8] The Public Body submits that the first four of the Applicant's access requests are repetitious and that it has already provided responses to the Applicant in responding to his previous access requests for the same information.

[9] I am satisfied, on the evidence before me that these requests are repetitious.

[10] The Applicant's later access request, sent after he received the Public Body's application to disregard his access requests, for all emails relating to him or his child does not appear to be repetitious; however, based upon my review of his previous access requests and communications, including the short time period in which they were sent to the Public Body, I find that it is systematic in nature as it is part of regular and deliberate pattern of conduct from the Applicant.

Section 55(1)(a) – the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests

[11] In addition to establishing that a request is either repetitious or systematic, under section 55(1)(a), a public body must also provide evidence that the requests would unreasonably

interfere with the operations of the public body *or* that they amount to an abuse of the right to make those requests.

[12] The Public Body provided evidence of the Applicant's previous access requests and its responses to those requests. It states that the Applicant is seeking the same information he has already received.

[13] The Applicant provided submissions in response. He stated that FOIP entitles him to make access requests for his own personal information and that of his child. He further provided lengthy submissions on his concerns with the Public Body and the ways in which it has interacted with him and his child. However, *this* matter before me is simply whether the Public Body has met its burden to establish that the requirements of section 55(1) of FOIP are met. I make no findings in this matter regarding the way the Applicant or his child have been treated by the Public Body with respect to alleged privacy violations or other matters.

[14] The Applicant acknowledged he had sent hundreds of communications to the Public Body, including emails, but explained this was, in part, because of the bullying and harassment he and his family were experiencing with the Public Body. There was no indication that the Applicant was seeking information other than what he had already received, but only that he wanted to prove that he had been wronged by the Public Body.

[15] The Public Body stated its belief that the Applicant's numerous access requests were based on its prior dismissal of complaints that the Applicant had made regarding a Peace Officer. I agree with the Public Body that the Applicant's numerous access requests do appear to broadly relate to his concerns with that Peace Officer. That alone, however, would not make the access requests abusive. As the Applicant correctly noted, FOIP entitles individuals to request their own personal information, as well as other records held by a public body (subject to limited and specific exceptions).

[16] The Public Body stated that the numerous access requests (approximately 20) submitted by the Applicant within a two and a half month period had unreasonably interfered with its operations. The employee tasked with responding to these requests had received over 40 emails from the Applicant in that time period and had spent a portion of every working day dealing with him. The Public Body did not provide any additional information about this employee's duties or the amount of time spent responding to the Applicant or how that compared to time spent on other FOIP matters. On the evidence before me, I am unable to conclude whether the Applicant's access requests *unreasonably* interfered with the Public Body's operations.

[17] The Public Body states that, with respect to the first four requests in this matter, the Applicant is continuing to seek the same information he has already received. As I am not aware of contrary evidence, I accept the Public Body's submission that the Applicant's requests are for the same information he has already received.

[18] As I have noted in numerous prior decisions under section 55(1), the fact that a request is repetitive can be abusive in and of itself. Accordingly, on the information before me, based solely on the repetitiousness of the access requests, I would authorize the Public Body to disregard those

[19] I find the Public Body has met its burden under section 55(1)(a) regarding the first four access requests, that is, it may disregard the access requests for the information that it has already provided the Applicant.

Section 55(1)(b) – frivolous or vexatious

[20] The Public Body submits that the Applicant's requests are vexatious. I will consider this argument regarding the Applicant's fifth request, as I have found the other ones may be disregarded under section 55(1)(a). A vexatious request is one in which the Applicant's true motive is other than to gain access to information, which can include the motive of harassing the public body to whom the request is made.

[21] Following the Public Body's application to disregard access requests under section 55(1), the Applicant made a further access request for every single email sent or received by the Public Body that had his or his child's name. The Public Body also provided copies of approximately 16 emails it had received from the Applicant within the same week of receiving that request. These emails are addressed to a number of Public Body employees and express the Applicant's anger with the Public Body, including expletives and numerous and various allegations of unfair treatment. One notable email, sent the day before that access request to one employee simply states "WITHOUT PREJUDICE FUCK YOU!!!".

[22] In a prior decision, (Request for Authorization to Disregard, Alberta Energy Regulator, OIPC File # 005876, issued July 27, 2018), I found as follows:

> In Order F2015-16, a public body refused to process an access request unless the applicant resubmitted it without language it considered insulting and offensive to government employees. The applicant refused to do so. I found that the offensive parts of the applicant's request were an abuse of the FOIP office's process and directed the public body to disregard these parts of the communication, but to process the parts that were a genuine request for information. I imposed a further condition that any additional communications from the Applicant to the Public Body containing similar material could be disregarded in their entirety.
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> That analysis is applicable to the matter before me. I stated in Order F2015-16:
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> > [para 39] I accept that a respectful workplace is an extremely important principle. Requiring government workers to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments is not only unwarranted,

> but I agree with the Public Body's argument […] that it could potentially "cause harm" by having a detrimental effect on their well-being.
> […]
> [para 51] There are many court and tribunal cases, particularly in the realm of human rights, in which the use of derogatory or vulgar language, or the making of unfounded accusations against government employees, has been held to constitute an abuse of process. (See, for example, *Bakhtiyari v. British Columbia Institute of Technology* [2007] BCHRT 320.) In such cases the persons using such language have been denied the exercise of what would otherwise be their rights, or have been denied remedies. In some of these cases, the decision-maker has required undertakings that the person conduct themselves appropriately, or has awarded costs against them. (See, for example, *Nourhaghighi v. Toronto Catholic School Board* [2009] HRTO 1519; *Heilman v. First Canada (No. 3)* [2011] BCHRT 260.)
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> [para 52] My conclusion in the present case is that despite the Applicant's explanations that the information he provided was necessary to help the FOIP Coordinator and others to understand his fear and anger, and to understand the seriousness of his request, the degree of offensiveness of some of the language was not necessary for this purpose.
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> [para 53] I find, therefore, that the motive for the inclusion of this particular language was other than to obtain information or to provide necessary background for obtaining it. The parts of the Applicant's request in which he makes belittling or severely insulting statements about individuals, appear to be motivated not by a desire to obtain information but by a desire to intimidate and deliberately offend. His ideas that he was not treated fairly or appropriately by government employees, even if this was important to inform what he was asking for, could have been stated without severe insult. Further the Applicant's refusal to remove the language when requested suggests that his motive is, in part, to assert some dominance or control over the process and other participants, and to resist others' exercise of authority, rather than simply to obtain information.

[23] In that decision, I found that scandalous or inflammatory language indicated that a request was vexatious under section 55(1). That finding is applicable here. Given the timing of the Applicant's access request for emails, and the obviously abusive nature of at least some of the emails sent to the Public Body, as well as the fact that the Public Body had already applied to disregard some of the Applicant's access requests, I find that the purpose of this email was not to obtain access to information, but to harass the Public Body. I find this access request is vexatious.

[24] I find the Public Body has met its burden to establish that the conditions of section 55(1)(b) of the FOIP Act are met with respect to the fifth access request.

Request for Authorization to Disregard Future Access Requests

[25] In its initial submission, the Public Body requested authorization to disregard any future access requests from the Applicant, or at a minimum, to disregard any other requests relating in any way to the matters already contained within his previous FOIP requests and peace officer complaints.

[26] Although I make no findings regarding the Applicant's allegations, having reviewed the Applicant's submissions and his communications to the Public Body, I accept that he believes he has been wronged by the Public Body. I am satisfied that the Applicant, at least initially, legitimately sought access to information regarding his concerns about the Peace Officer and the Public Body, and I also accept the Public Body's position that the Applicant has exhausted these rights with respect to the access requests before me.

[27] Although I found in these circumstances that the repetitious nature of his requests has been an abuse of his access rights, and his abusive communications have led to the finding that another access request is vexatious, I do not agree, at this time, that the Applicant should be completely prevented from exercising his legitimate access rights under FOIP in the future.

[28] A common theme through the Applicant's submissions are that his family has been targeted by a particular Peace Officer. Should any future incidents arise between the Applicant and the Public Body, he has the right to request information regarding those matters. However, the Applicant should not be abusing his access rights by requesting the same information he has already received or abusing employees of the Public Body with scandalous or inflammatory language.

[29] I will grant the Public Body's request to disregard future requests from the Applicant only in a limited way. It may disregard any future access requests from the Applicant for information that he has already received from the Public Body in response to a previous access request. Otherwise, the Applicant is entitled to make access requests to the Public Body under FOIP.

[30] Should the Public Body receive any access requests from the Applicant in the future that it believes meet the criteria under section 55(1), including circumstances where the Applicant is using abusive language in the context of his access requests, the Public Body may apply again under section 55(1) to disregard those access requests.

Decision

[31] On the basis of the evidence before me, I have decided to exercise my discretion under section 55(1) of the FOIP Act. The Public Body is authorized to disregard the Applicant's access requests.

[32] The Public Body must respond to any future access requests made by the Applicant under FOIP, unless they are for information that he has already received. The Public Body may bring future requests under section 55(1) if it believes the criteria are met.

Jill Clayton
Information and Privacy Commissioner

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